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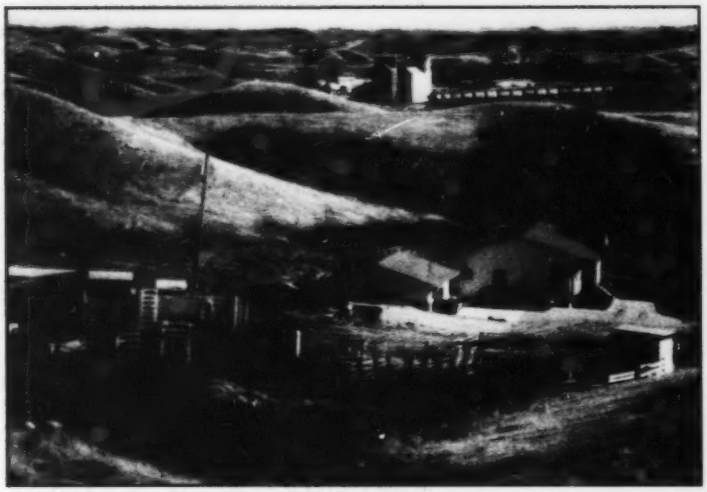

Real Estate Transactions

A Farmer's Guide

Forward

This publication outlines the procedures and consideration in buying and selling real property in Saskatchewan. It is based on an earlier publication from Agriculture Canada, entitled "The Real Estate Process: An Introductory Guide for Farmers" 1980.

Farm Management Section
Economics Branch
Saskatchewan Agriculture and Food
November 1990

93-00459/

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The Real Estate Process

I. Introduction and Summary

Real estate transactions involve heavy financial commitment and long term consequences. Improper procedures can lead to personal hardship or serious legal entanglement. Few people possess an adequate understanding of its essential elements. For example, do you know the difference between a General Listing and an Exclusive Listing? Or between a Deposit and a Down Payment? Did you know that a signed Offer to Purchase is a binding legal document?

Transferring the ownership of a parcel of land from a seller to a buyer involves a series of specific and clearly defined steps. This publication indicates these steps in some detail. It includes a glossary briefly defining important terms.

This publication is neither a legal document nor a substitute for any qualified legal opinion. Every situation must be considered on its own merits within the appropriate legal jurisdiction. The consequences of legislation concerning real property are serious and far-reaching. Therefore, even where a transaction may appear relatively clear and simple, the cost of engaging a reputable lawyer is good insurance that the transaction will proceed without unnecessary delay or unexpected consequences. The purpose of this publication is to help you ask the questions which are relevant to your situation, and to place the answers within the context of the total transaction to minimize the time and costs involved.

The transfer of Real Property is one basic process, of which selling and buying are its two parts. However, for the sake of simplicity the basic process will be explained from the perspective of the seller. A separate section follows where questions of particular importance to a buyer are considered.

The following are the key stages in a real estate transaction.

1. When you decide to sell your farm, important decisions lie ahead. Firstly, do you want to try to sell it yourself? That means finding a buyer, making legal and financial arrangements, and completing the transfer with the help of a qualified lawyer. Or can you ask some agent or relator to see to these tasks on your behalf. But before approaching any agent you need to ask yourself such questions as: What is my property worth? When can I grant possession to the new owner? Will I sell to anyone who meets my terms?

2. Once you are aware of these and other similar questions, and their alternatives, you will be better prepared to discuss the proposed sale with a real estate agent. You will also lessen the need to make snap decisions regarding important information that he will want to include on the listing information agreement you may make with him and which you must sign. You will also have to choose what type of listing you prefer.

3. When the agent locates a potential buyer, you will be presented with a signed Offer to Purchase stating what this potential buyer is willing to offer in payment and terms. If may be less than you asked, but you will then need to decide whether or not to accept it. As a guarantee of good faith, the potential purchaser will have placed a deposit with your agent.

4. When accepted, it is then known as an Interim Agreement which is a binding contract, subject only to any conditions of purchase which must first be satisfied. The offer should clearly state what these conditions are, and the expiry date for meeting them. If they are not met within the specified time, the contract is cancelled and the deposit returned. The conditions are an integral part of the offer, and to accept the offer is also to accept the conditions attached to it.

5. Once the respective lawyers are satisfied that the terms are fully met and papers are in order, they will arrange the transfer of funds to you and the registration of the property in the name of the new owner with the Land Titles Office. A date will also have been specified, usually in the Offer to Purchase, when the buyer will assume responsibilities for such items as insurance, taxes, and utilities, after checking to assure that they are not in arrears. Often this date, known as the adjustment date, will be the same as the closing date, the date set for the transfer of funds and the registration of the property in the name of the new owner.

6. The real estate agent will probably already have deducted his commission, and the lawyer his fee, before you receive the balance of the proceeds from the sale.

These six basic steps of the real estate process will be discussed more fully in the following pages. While they may seem to be complex, remember that in Canada, no agreement regarding land is legally enforceable unless it is recorded in writing. This documentation must include (a) evidence of the agreement made, (b) a description of the parties involved, (c) a legal description of the property, (d) a statement of price, (e) the signatures of the parties to the agreement, and (f) any other material condition of the agreement. Shortcutting any of these requirements could prove very risky, and very expensive.

II. Procedures and Considerations in Selling Real Property

1. Preliminary Considerations.

Consider the following points before placing your property on the market:

1. What do I think my property is worth? How much might I be willing to compromise for a quick sale?

2. What terms of payment will I accept? All cash? Cash to mortgage? Full mortgage? Agreement for sale? Property exchange?

3. If the property on which the family home is located is being sold, am I and my partner both in agreement with the proposed sale and its terms? If it is a farm, do we want to retain the right to live on the farmstead; or subdivide it off? If a subdivision is contemplated, is there any legislation or bylaw prohibiting that, or requiring the consent of some authority?

4. If I hold mineral rights to the property, will they be included? For how much?

5. How soon am I willing to give the buyer possession of the property?

6. How much time am I willing to give a real estate agent to find a buyer?

7. Have I chosen a lawyer to complete the transaction on my behalf?

8. What chattels, i.e. items not permanently attached to the land, are to be included in the sale (e.g. granaries, water tanks, garden sheds)?
9. What crops, livestock, or machinery are included, and what prices are to be placed on them?

If you have already found a prospective buyer, you may only want the services of a lawyer or some other qualified person who will advise and assist you in completing the transaction. If you do not have a buyer, you have 2 choices (a) attempt to find a buyer yourself. Personally contact potential buyers in you area and advertise in local newspapers, or (b) contact a real estate agency who will undertake the task of finding a buyer for you. An agent works out the details of completing the sale and transfer, usually through your lawyer. In technical and legal terms, you as seller, are referred to as the Vendor and the buyer as the Purchaser.

In dealing with a real estate agent, determine the costs, the services provided, and the obligations you must fulfil. Even if you do not engage an agent, the following discussion may point up some important considerations which you might otherwise overlook.

2. Listings

A real estate agency will require you to complete and sign a Listing Form or Listing Agreement. Through it, for a specified period of time, you give them the right to find a buyer for your property.

The Listing Form will ask for a number of pieces of information.

1. It will specify the length of the listing period.

2. It will specify the exact description of the property to be sold and what chattels (i.e. goods or improvements located on the property) are to be included.

3. In some cases, it may specify certain items which are to be excluded, or for which an additional charge will be made, if the buyer wishes to include them.

4. It is also wise to specify, as well as the total cost the acceptable terms under which the sale may be made: e.g. down payment, cash to mortgage, etc.

5. It should also mention a date on which the property is available for possession.

6. It will specify the percentage rate or dollar amount of the relator's commission to be paid upon successful completion of the sale.

A listing agreement is a legally binding document. That means for example, if the agent finds a buyer willing to meet in all respects the conditions laid down in the listing agreement, and presents a signed offer for the purchase of the property, the seller is obligated to do one of two things. He may accept the offer, fulfilling the terms specified in his listing. Or, if he, for some reason, chooses not to accept the offer, he is legally liable, at the agent's discretion, to pay the agent's commission fee, even if the sale is not completed.

In some instances the vendor may be sued successfully by the purchaser for specific performance and/or damages.

Therefore, any conditions which a vendor wishes to attach to the sale of his property must be clearly and exactly set out in the listing agreement. Furthermore, even though the sale may not be completed during the time of listing, if the agent can demonstrate that through his actions he has initially acquainted the *eventual purchaser* with the

availability of the property, then the agent is legally entitled to claim his commission.

A word of caution. Always be wary of any potential buyer who approaches you during or shortly after the expiry of a listing agreement and suggests both of you can save money by making a private deal. Remember, he has no legal obligation to your listing agent, but you have. Therefore, if you contemplate working out a private deal, be sure to protect yourself by having him complete a sworn affidavit to the effect that he has not been introduced to the property by any agent. This is particularly important when you are using a Multiple Listing Service, in which case a great many agents completely strange to you have access to information about your property and a legal right to introduce prospective buyers to it.

A listing may be in one of three categories: Exclusive Listings, Multiple Listing Service, General Listing (sometimes referred to as Open Listing).

1. **Exclusive Listing** - An Exclusive Listing means the listing agency holds the exclusive right to find a buyer for the property during the listing period. They may claim their commission if the property is sold during this time, even though a buyer may come forward who has had no contact of any kind with them. The chief weakness of this system is that the vendor has no guarantee that the listing agency will actively or aggressively seek a buyer. Furthermore, the vendor lacks the power to do much about it, except complain to his agent, who is usually concerned about his reputation.

   Since many sales people and agencies specialize in different types of property, be careful to choose an agent knowledgeable in your type of property. You are depending on his efforts, and paying him well, to sell you property.

2. **Multiple Listing Service (M.L.S.)** - The listing may also be an exclusive M.L.S. listing whereby a number of cooperating agencies share listing. (Also referred to as a cooperative listing.) Any M.L.S. member agency may seek a buyer. This improves the marketability of your property, but it may also cost you a higher commission charge. If you wish this wider exposure, ask your agent if he is an M.L.S. member. The exclusive right to sell and claim commission is similar to that of the single agency exclusive listing: i.e., M.L.S. is basically a specialized type of exclusive listing.

3. **General Listing (Open)** - The third and least binding of all forms of listing is called a General Listing. It simply says to the agent, "Look, I have a piece of property for sale and you're welcome to find a buyer, but I reserve the right to find my own

buyer, or make a general listing with any other agent I choose at any time."

Even though the property is listed with an agent in this manner, the vendor may have a purchaser come directly to him with no knowledge that the property was listed through an agent. In this case, assuming that the agent does not render any services with regard to completing the sale of the property, the vendor bears no legal obligation to pay the listing agent a commission.

However, most agencies discourage, and sometimes refuse to accept general listings. For one thing, the agent has no assurance of earning a commission as the property may be sold by the owner or another agent. Furthermore, legal complications may develop over who actually introduced the purchaser to the property. In some situations, the vendor risks being liable for a double commission. For example, a potential purchaser is introduced by one agent, then later chooses to deal with a different agent. If the second agent actually completes the transaction, both agents may claim and legally collect a full commission. If you choose to deal through a general listing, be very careful of your legal obligations before completing the transaction.

It is worth remembering that the whole legal premise of real estate transaction law is that an agent, unless clearly indicated otherwise, is deemed to the representing the vendor. On this basis, even verbal indications to a realtor that your property is for sale and that he is free to seek a purchaser, may result in a valid claim for commission, if the eventual purchaser is introduced to the property by that realtor.

While a buyer may specifically engage a realtor on a commission or fee basis to locate a piece of property on his behalf for purchase, normally the agent is always deemed to be representing the interest of the vendor. On this basis, even verbal indications to a realtor that your property is for sale and that he is free to seek a purchaser, may result in a valid claim for commission, if the eventual purchaser is introduced to the property by that realtor.

While a buyer may specifically engage a realtor on a commission or fee basis to locate a piece of property on his behalf for purchase, normally the agent is always deemed to be representing the interest of the vendor. As a vendor, you are entitled to expect the agent to be working for your interests, as you are paying the commission. But in order to protect yourself, (a) check his reputation before listing, and (b) do not make exclusive listings for longer periods than you are prepared to reasonably allow for making the sale, or beyond which you may wish to adjust the asking price or other terms. Normally an agent is prepared to adjust the price or terms on a listing with a reasonable notice, but you have entered into a binding contract and he

is not required to do so. Withdrawal of an exclusive listing could lead to a claim for damages.

Some realtors offer guaranteed sales, i.e. they promise to sell your property before a certain time, or else to buy it at an agreed price. This is useful in those cases where circumstances require a forced move or purchase by a given date, but also calls for careful shopping around for the best offer. Any guarantee must legally be on the basis of a net price to the vendor, but often carries with it other restrictive conditions.

While on the topic of agents acting as purchasers, we should also point out another significant issue. Any agent who knows that, by completing the sale, he may gain an interest in the property or its resale, apart from his immediate commission, must declare that interest to the vendor. This is intended to minimize chances for a conflict of interest since the realtor is engaged to work on the vendor's behalf. Failure to declare such interest may result in the loss of his realtor's license and other penalties. Beware of any agent who offers to purchase your property outright.

3. Offer to Purchase and Interim Agreement

A buyer who wants to make an offer on property will be required by the agent to complete an Offer to Purchase and Interim Agreement. If the purchaser is prepared to pay the asking price indicated on the listing, the terms are simply entered on the offer and he signifies that he is serious by giving the agent a deposit. We will return to this deposit later.

The purchaser may make an offer less than the asking price or with different terms. The offer to purchase is prepared and signed in the usual manner. The agent presents the offer to purchase to the vendor for his consideration. If the offer meets the terms of the listing, or is otherwise satisfactory, the vendor simply signs the offer. *At that point, signed by both parties, vendor and purchaser, it becomes a legally binding interim agreement.*

If the offer is less than the asking price, or attaches unacceptable conditions, the vendor has two further options. He may reject the offer outright, or he may make a counter offer. A counter offer usually involves a compromise figure somewhere between the original asking price and the signed offer. Occasionally two or three such offers and counter offers are made before mutually acceptable terms are agreed upon by both parties.

In order for an agreement to be reached, there must be an offer and an acceptance of that offer. An "Acceptance" which varies any of the terms of the offer is not acceptance, but is merely a counter offer which will only be binding upon its acceptance by the other party. A counter offer cancels all previous offers, and thus, if one party says

that he rejects the counter offer but accepts a previous offer, this is not an acceptance in fact. It is merely another counter offer which may be either accepted or rejected by the other party involved.

The Offer to Purchase legally must always include the date of possession of the property and the adjustment date for taxes, interest and rents, should the offer be accepted. If there is condition of purchase, e.g. if the offer is conditional upon arranging a mortgage, the offer should also include an expiry date for that condition. *If this expiry date is not specified, the condition is not deemed to expire until the specified possession date. The purchaser has until that time to secure the specified financing, or to satisfy any other conditions specified in the offer to purchase.* Thus unless an expiry date is specified prior to the possession date, the vendor may be placed in the position of having to locate a new place to live, or of committing himself to a new purchase, *with no assurance that his own sale may actually be completed*. Extremely serious and even tragic consequences can result, especially if the possession date for the vendor's new property precedes that for the property he is selling.

A similar situation is the option to purchase. A purchaser may offer a bonus payment in return for the right to purchase the property at a given price any time before a specified date. In this case the vendor is bound for that period, unable to otherwise dispose of his property. Meanwhile the option holder is committed only to the amount paid for the option right. In a rising market, vendors should be very wary of options that extend for any significant period of time, unless they have clear reasons for using them, e.g. father-son agreements.

In preparing an offer, the parties to the agreement should agree to the values to be placed on the bare land and on each of the various buildings and improvements that may be on the land. This agreement is important and it affects both the vendor's and purchaser's tax position in relation to capital gains and capital cost allowance.

4. Conditional Sale

The property is legally sold when both parties sign the offer to purchase, subject to arranging satisfactory financing or other specified conditions. This is referred to as a conditional sale.

If the financing is found, then the transfer of land is completed according to the terms of sale. If financing cannot be found, the agreement is cancelled, the deposit is returned to the purchaser, and the property rights, subject to continuing listing commitments, revert in total to the owner. Remember, *once the vendor has signed the offer to purchase he has legally sold the property and has no legal way by which he can withdraw from the sale, other than through the buyer's failure to fulfil the terms of payment or any other conditions*

required by the offer to purchase. Therefore, it is important to understand the following three concepts.

1. **Deposit** - The purchaser can decide not to go through with the purchase, at the cost of forfeiting his deposit. In addition, the purchaser may be sued for damages and/or performance. This deposit is usually equal to 10% of the total selling price, although it may be set at almost any reasonable amount. Relatively few dollars are technically sufficient to make valid an Offer to Purchase. However, the vendor ought to be aware that if he accepts and signs such an offer, the only protection he has against change of heart by the potential buyer is the amount of money committed as a deposit unless he is prepared to commence legal action against the purchaser. And from that sum, the agent may also be entitled to subtract his commission.

   If the purchaser backs out, he forfeits his deposit. The only legal way the purchaser may back out of a conditional agreement without forfeiting his deposit is failure to be able to fulfil his specified conditions, e.g. the purchaser may be required to supply evidence that he has applied for and been refused the required financing.

2. **Down Payment** - At this point a clear distinction should be made between a deposit and a down payment. The deposit, as already indicated, is the money which the buyer gives to the agent at the time of making an offer to purchase, and which is liable to forfeiture if he later fails to live up to his offer. The down payment on the other hand, is the initial amount of cash that the buyer pays toward the total purchase price, the amount over and above which terms of financing are arranged. This money is **not forfeitable** upon failure to complete the initial transaction. Put another way, a down payment is a partial payment of the purchase price. A deposit, on the other hand, is simply a guarantee of good intention, money which later is applied to the purchase price if the transaction is completed.

3. **Additional Financing** - A great many interim agreements fail to become completed transactions. The most common cause is failure to secure financing. Since interim agreements involve considerable time and effort, tying up the property to the possible loss of other potential buyers, it is of some importance that the vendor and his agent satisfy themselves regarding the purchaser's financing potential prior to accepting an offer to purchase. There are not guarantees beyond cash in hand, but there are some helpful tools for clarifying the alternatives.

Many Offer to Purchase forms now in use require that the purchaser specify not only the amount to be financed, but also the maximum monthly payments, interest rates, and number of days allowed for securing the mortgage. Letters of refusal from usual lending agencies,

based on these terms, may be required as proof of rejection. The agent or vendor may also have the option locating a source of financing which meets these terms, should the purchaser fail to do so.

If the vendor chooses to use an Agreement for Sale, he accepts greater risks. If the purchaser defaults on the agreement, the vendor incurs the legal costs and delays of a foreclosure action, along with possible depreciation of this property.

Where financing is involved, long lead times may be required for processing the application. The property is effectively frozen in the interim. A similar difficulty may arise where the offer to purchase is made conditional on the sale of other property owned by the purchaser.

There may also be important income tax implications depending on the method of sale and financing. Farmers especially should check these with their accountant before entering into any binding agreements.

All of these items need to be assessed carefully before the offer is accepted. Further, the vendor should determine if his outstanding mortgages are transferable to a new owner, or whether they may even become due and payable on resale. This determines the feasibility of completing the transaction on the basis of an agreement for sale, personally carrying a new mortgage.

Review items such as utility contracts, or other outstanding obligations involving the property. For example, caveats against the property will have first claim on the proceeds and must be discharged before transfer of the title will be permitted.

If you are uncertain about any aspect of the sale, consult your listing agent and/or your lawyer before you sign. If time is a consideration you may wish to accept the offer conditional upon approval of your listing agent and/or lawyer. Remember the purchaser may legally withdraw his offer *at any time* up to the time of acceptance even though the Offer to Purchase may specify "this offer is open for acceptance until...".

5. Transfer and Conveyancing

In Saskatchewan, the Land Titles system is the system of land registration.

The documents are submitted in the Land Titles Office. The Land Titles Office will issue a certificate of title in the name of the owner and indicates outstanding claims against the property. An insurance fund is set up to deal with the possibility of error by the Master of Titles.

When the conditional sale has been made, and acceptable financing arrangements have been completed, the task of completing the transfer papers remains. This documentation should be completed by a lawyer, unless the vendor and purchaser wish to complete their own documents. (This is not recommended) In many cases, the vendor and the purchaser each have a lawyer complete the arrangements of the transaction on their behalf. Necessary information for effecting this transfer are usually included on the Offer to Purchase agreement. The deposit for the property is usually paid by the purchaser to the real estate agent who holds the money in trust until all the papers have been signed. The balance is usually transferred through the Certificate of Title with the Land Title's Office to be sure that there is no other encumbrance or obligation against it, and a new Certificate of Title is registered in the name of the new owner. Where a mortgage is involved the mortgage company will hold the title until their interest is discharged.

Occasionally, the transaction is handled through an Agreement for Sale, whereby no transfer is completed until the full payment has been made. In the meantime, the original owner continues to hold the title. This is a common arrangement in handling farm lands and is just as legally binding. In this case, the purchaser will register a caveat (notice of legal interest in the property) on the Certificate of Title, to insure it cannot be otherwise mortgaged or disposed of without his permission.

Occasionally, someone will neglect to remove a caveat they have registered against a property even when it no longer applies. In that case the owner may request its removal.

The fees relating to the transferring of property from one owner to another are referred to as conveyancing fees and, unless other arrangements are made, they are usually divided evenly between the seller and the buyer. There is in addition, a significant fee levied by the Land Title's Office for registration of the title in the name of the new owner. This cost is born by the new owner.

6. Commissions

Real estate agents work on a commission basis. The fee may vary depending on the type of property and type of listing.

Normally the fee or commission is split three ways. A portion goes to the salesperson who made the listing agreement. A further portion goes to the salesperson who finds the buyer. The third portion goes to the agency for whom the salesperson works. In many cases, more than one of these functions may be fulfilled by the same person.

The fee is generally a percentage of the total selling price. For General or Exclusive Listings, it might run from 3 to 6% of the total price. Multiple Listing Service listings may run about 1% higher.

Ensure that the commission rate is specified in writing when the original listing is made.

Legislation now prohibits real estate firms combining to establish fixed commission rates. There is now considerable room for shopping around and negotiating for the best offered commission fee. Before accepting the cheapest rate, check the sales and service record of the agencies involved.

When all parties are satisfactorily protected, the funds are released by the lawyer to the former owner and the Duplicate Certificate of Title is released to the new owner, or to the mortgage holders, or held by the Land Titles Office on their behalf. The real estate agent withholds his commission from the vendor's proceeds and the transaction is closed.

III. Procedures and Considerations in Buying Real Property

1. Preliminary Considerations

While buyer and seller are the two faces of one coin, what works to the best advantage of one may not be to the best advantage of the other. It is therefore important that both undertake their transaction on the basis of sound information and thorough preparation. As a purchaser you will be faced with such questions as:

1. What are the key features required of the property for my intended use?

2. Is my proposed use restricted by any regulation or other agreement?

3. How soon must I be able to take possession?

4. What financial options are open to me, and are they realistic in terms of the current market?

5. In what form should I hold the title to my new property?

6. Who will represent my interest in completing the legal details of my purchase?

The following discussion is aimed at assisting you in answering these questions and then in acting upon them.

2. Locating a Suitable Property

Every property is unique, as are the particular needs of every buyer. The amount of money involved, together with the cost and complexity

of completing the sale, means that you can't reverse a decision once made.

The following four items should be carefully checked. The first is the associated property rights such as minerals and precious stones (e.g. oil, metals, gravel).

In Saskatchewan some mineral rights are reserved to the Crown, and some are privately held which pass to a new owner with the land, unless reserved. In the absence of some statutory authority that reserves the mineral rights to the Crown, those rights will pass with the land, unless specifically reserved.

The second item involves any restrictions or limitations placed upon your freedom to use the property as you wish. Determine if there are any public regulations such as zoning, development control, or land use bylaws, or specific limitations, such as easements or restrictive covenants, which give someone else access to or control over some aspect of the property (e.g. rights of way for pipelines, utilities or roadways). These limitations will be recorded on the land title and may pass with the property through a series of owners. They may be readily identified by means of a Title Search. If you are uncertain, your offer may be made conditional upon a certain use being permitted. In the case of farmland, be particularly careful to check for existing lease agreements, and the required timing for any notice to a renter terminating a carryover lease.

Leases for longer than three years must be registered under title by caveat. Land classification for property tax purposes could change at the time of sale depending on the past and intended use.

A third item is Builder's Liens. If buildings on the property have recently either been constructed or renovated, there is a chance that the builder has not been paid, or that suppliers or subtrades have not been paid. Any one of these has a certain time within which to file a builder's lien which stands against the property until it is settled.

A builder has 40 days to file a lien. A title search will determine whether any such outstanding claims exist against the property.

The fourth item concerns which chattels are to be included with the property and which ones are retained by the vendor (e.g. drapes are not considered a fixture which goes with the property, while the drapery rods may be). Normally items solidly attached to the real property are transferred with it. List such items on the sale agreement either as included; included for an extra sum; or excluded. Then there is no doubt.

A vendor may wish to remove attached fixtures, especially if the fixtures are of a trade nature, e.g. machine-shop equipment, etc. This should be noted on the sale agreement and the fixtures identified.

Otherwise these fixtures will remain with the property and the vendor will not be entitled to remove them. A provision in its contract should specify who is responsible for damages to the property as a result of this removal.

Clarify issues regarding the provision of normal utility and public services (e.g. telephone, mail, garbage, sewage, water, gas and power). Be cautious in assuming that there will be no problem, or that things will be much as they are in your present location.

3. Making the Purchase

If you have been introduced to a listed property by a realtor or realtor's advertising (e.g. signs, catalogues, advertisements), then make use of his services. The vendor is already committed to the realtor's commission, buy only after the sale has actually been completed.

When making an Offer to Purchase to the vendor through a realtor, you must give a deposit. This deposit serves two purposes. Firstly, it makes the contract legally enforceable by either party. Secondly, it protects the vendor from you changing your mind before the transaction is completed. If you back out, you forfeit your deposit.

The deposit is not the same thing as a down payment, which is part of the financial arrangements for meeting the full purchase price. The proposed down payment and a number of other items related to financing, including the conditions expected of an acceptable mortgage, reference to proceeds of a pending sale, and any other payment provisions, should be noted in the Offer to Purchase.

A realtor may attempt to withhold part of the deposit by charging service charges even though the purchaser was honestly unable to complete a transaction. The purchaser has no obligation to the vendors agent and should insist on the full refund of the deposit.

The adjustment date is the date when responsibility for certain costs (taxes, insurance, fuel, utilities, etc) become that of the purchaser rather than the vendor. The vendor will be reimbursed for any of these costs which he paid for beyond the adjustment date.

The expiry date is the date and time when an offer expires if not previously accepted. As a buyer it is in your interest to keep the expiry date as short as possible. Practically it is not feasible for you to make an offer on another property prior to the expiry date of another offer. Remember, however, that an offer may be withdrawn at any time up to the time of the vendor's acceptance.

If a substantial deposit is tied up for an extended period of time, you should arrange to have the funds placed in a interest-bearing trust

account with the interest to accrue to you or to the vendor or shared equally.

If special conditions are involved, e.g. conditional on the sale of another property, be sure these are written into the offer and dated as to their period of effect. Once the vendor accepts and signs the offer, it becomes a Conditional Sale. This document contains all the legally binding terms of the agreement and any condition not listed in that agreement cannot later be introduced for the purpose of revising or revoking it.

If a condition is for the benefit of one party it would be wise to specify whether that party can waive fulfilment of the condition. For example, sometimes a sale is conditional upon the purchaser being able to find a purchaser for his present property within a specified time period. If he cannot, the condition has been fulfilled, and the deal is off. However, the purchaser may wish to retain the option of completing the deal even if he is unable to find a purchaser for his property. If that is the case it should be stated in the agreement that this condition is for the benefit of the purchaser, and may be waived by him at any time up to and including the date specified.

If the vendor has lived on the property together with a spouse, the requirements of the Homestead's Act 1989 must be fulfilled. The vendor's non-owning spouse must give written permission for the property to be sold. This is accomplished by the non-owning spouse signing the "Consent of Non-Owning Spouse" form.

Once the necessary financial arrangements have been completed the transfer documents are completed by each party's lawyer. A new title is prepared, funds are released to the vendor and the transaction is complete. If there is any appreciable delay in completing these documents, or in taking possession, it is advisable to take two precautions. Firstly, register a caveat on the existing title as to your interest in the property. Secondly, either purchase your own fire insurance on any structures which warrant such protection, or be sure an insurance clause is written into the agreement.

4. Financing

The inability to arrange suitable financial arrangements is the major reason why real estate transactions are not completed. You will do both yourself and the vendor a favour if you have carefully assessed your options, (e.g. all cash, cash to existing mortgage, new or vendor mortgage, existing plus additional mortgage, exchange of properties, or agreement for sale). Each option carries its own particular implications.

All cash, or cash to an existing mortgage is fairly straightforward. However, determine if an existing mortgage is readily transferable. Some types of financing are restricted to particular groups or

situations. But where possible, it may be advantageous to assume an existing long term mortgage on the property. Before refinancing a property on a new long term mortgage, make a careful comparison with the merits of under-taking a relatively high cost but short-term second mortgage. It may cost more in the short run, but it gives you the option of quickly retiring it and substantially reducing your total interest payments in the long run. On the other hand, some mortgages are not dischargeable without a substantial penalty and any form of payment which necessitates discharging an existing mortgage will need to consider this possibility.

Most new residential mortgages are based on one to five year renewable terms. Technically a 25 year mortgage of this type is composed of several mortgages over the 25 year period with an adjustment to the interest rate at each renewal date. A lender could decline to renew the mortgage at the end of any term, but the borrower is free to take his mortgage somewhere else, if he can find better terms.

In shopping for mortgage money, besides the initial interest rate, consider the fees for drawing up the mortgages, renewal fees, and prepayment penalties.

Most mortgages are recorded on the Certificate of Title, standing as first, second, or third, etc., by date of registration. In case of default and foreclosure the first mortgage is fully paid out before the second, and so on down the line. Occasionally it may be preferable to have a private loan which is not registered on the Title, in order to protect future borrowing power. This may be done in two ways. An Unregistered Mortgage may be drawn up, secured by giving the lender possession of the Duplicate Certificate of Title, plus his filing a caveat noting his interest in the property. It may also be done by an Assignment of Equity where no formal mortgage is drawn, but in its place an agreement is signed whereby, upon disposition of the property, equity is assigned to the lender according to his interest. It is secured by a caveat as above.

In the case of a sale being conditional upon the arranging of satisfactory financing, if it is unobtainable, written refusals from a number of lenders may be required before you will be released from your agreement. The vendor or his agent may also claim the right to arrange a mortgage with a lender of their choice, within the terms specified on the offer, if you are unable to do so.

With this in mind it is well to remember that mortgages are frequently bought and sold. This is particularly true of uninsured higher risk mortgages. The lender who advances the money may not be the one who ends up being your creditor. In case of difficulty in meeting payments, you may end up in a tight corner facing an unsympathetic mortgage holder.

One way of avoiding mortgages altogether under the Land Titles system is to arrange an Agreement for Sale with the vendor. In this case the vendor retains title until payment is complete, but you have full rights of use and possession in the meantime. The only real limitation on you is that you cannot use your equity in the property as security for further loans. This method is a popular means of transferring farm property within families.

When purchasing a new property before the proceeds of disposition are received from a previously concluded sale, it is usually possible to complete an Assignment of Equity agreement. As soon as monies are released from the previous sale, they are forwarded directly to the vendor's agent as payment on the new property.

Tenure

An individual who purchases property will have his name appear on the title as sole owner. However if property is purchased as a family, partnership, or group of individuals, the matter is not quite so simple.

There are three basic ways of holding property; Sole proprietorship, joint-tenancy, and tenancy-in-common. Sole proprietorship is just what it implies, with one name appearing on the title as sole owner. If the residence of the owner and his/-her spouse is located on the property, the partner is protected from having the property sold without their consent by the provisions of the Homestead Act.

Joint-tenancy can involve any number of partial owners, so long as they all own the property equally, all have equal rights as to the use of the whole property, and all take possession of the property at one time and by one title. The key feature of joint-tenancy is that upon the death of one partner, their share automatically is redistributed equally among the remaining partners, bypassing any provisions or fees connected with a will or estate. Thus joint-tenancy is commonly used between husband and wife in the ownership of a home, and between business partners to avoid legal complications connected with the death of a partner.

A tenancy-in-common requires only that all joint owners have equal right of use over the whole property. Each may own a different share of the property and may dispose of that share without altering the shares of others. Each share can appear on a separate title. Shares of property held in this manner are treated as any other personal property upon death, becoming part of the estate and being distributed in accordance with a Will or rules of Intestate Succession.

Ascertain the form of ownership under which the property is presently held. If the land is presently held by a partnership, or by joint or common tenants, be sure that all partners or joint or common tenants sign the Offer to Purchase. If those parties do not sign they will not be bound by the actions of their co-owner. You may have an action

for damages against the party who signed the agreement, but you probably will not be able to enforce the sale.

It is common to place a family home in joint-tenancy between husband and wife to indicate family ownership. Many people jump into joint-tenancy without considering the implications associated with a marriage breakup, should it occur at a future date. By the same token, business partners, especially farmers, should be very sure they understand the possible implications for their family of holding land between themselves in joint-tenancy. Upon the death of either business partner, it will pass directly to the other without any legal provision for their own family, will or no will.

IV. Conclusion

The purchase of property is one of the most complex transactions an individual can enter into. There are many legal and financial considerations involved. Seek professional advise if you are unfamiliar with the legal and financial requirements of completing a transaction. Mistakes can be very costly.

In Saskatchewan, much of the farm land is sold by private negotiation between the vendor and the purchaser. It is advisable to engage the services of a lawyer to formalize the contract and complete the transaction.

Some farm land and most of the housing transactions are handled by realtors. Vendors who engage a realtor to handle a sale should seek a realtor who has a reputation of honesty and success in selling.

Glossary of Real Estate Terms

Adjustment Date	Date on which buyer assumes responsibility for property taxes, utilities, etc.
Affidavit	A legally sworn signed, dated, and binding document declaring all contents contained within it to be true and correct.
Agreement for Sale	A legal document between a vendor and a purchaser, and setting forth the terms of sale for a property. Terms of payment and change of occupancy may readily be carried out under such an agreement, even though the formal transfer and registration does not take place until the terms of payment have been fulfilled.
Asking Price	The price at which a vendor lists his property for sale with a realtor.
Assignment of Equity	An agreement whereby a debtor assigns directly to a creditor any proceeds he may receive, up to the amount of the debt, from the sale of assets he owns.
Builder's Lien	A claim which may be placed against the property by a builder or supplier of materials or labour upon failure of the owner or contractor to pay for services rendered. The builder or supplier has 40 days from the date of completion to register the lien.
Carryover Lease	A lease on which the renter is allowed to continue occupying the property on the same terms as the original lease, after the term of that agreement has expired.
Caveat	A declaration of legal interest in a property by someone other than the registered owner, filed with the Land Titles Office and noted on the Certificate and Duplicate Certificate of Title. No title may be transferred until all existing caveats have been removed.
Certificate of Title	The legal document recording ownership of land. The original always remains with the Land Titles Office, while a Duplicate is issued to the owner. The Duplicate must be surrendered before a transfer of land may be completed.
Chattels	Goods or improvements located on, but not permanently attached to, a parcel of property.
Commission	The fee paid to an agent for locating a suitable buyer for a property listed for sale. Normally a percentage of the selling price.
Condition of Purchase	A specific condition attached to an Offer to Purchase such as "subject to obtaining a mortgage for a specified amount".

Conditional Sale	A property for which an Offer to Purchase has been signed by both vendor and purchaser (i.e. an interim agreement), and for which the conditions of the sale have not all been met, or for which the time for meeting those conditions has not expired.
Conveyancing	The process of completing the various steps of the transfer of ownership of property from seller to buyer. These costs are usually shared equally between the vendor and the purchaser.
Counter Offer	New terms under which the vendor will agree to sell to the potential purchaser if the purchaser's first offer is not acceptable.
Date of Possession	The date by which the vendor must vacate the property and on which the purchaser may occupy it.
Deposit	Money (usually 10% of purchase price) paid by the purchaser to the real estate agent as a guarantee of his intention to buy. This money is forfeited, but not necessarily all to the vendor, if the purchaser fails to complete the transaction.
Down Payment	The cash money paid to the vendor by the purchaser at the time of sale, beyond which terms of financing are arranged. A down payment cannot be forfeited.
Easement	A specific right granted to some individual other than the landowner to engage in some usage of, control over, the property for the individual's own benefit, e.g. a right-of-way, access, etc.
Exclusive Listing	The exclusive right granted to one agent or agency for a specified period of time to find a buyer for a property.
General Listing (may also be known as an "Open Listing")	A listing granted to a real estate agent, while reserving the right to sell the property through any other agent or even no agent at all.
Guaranteed Sale	A guarantee made by an agent at he time of listing to sell the property at or above a specified price and before a given date, after which the agent will himself buy it.
Homestead Rights	Under the Homestead Act the spouse of the landowner (non-owner spouse) must give permission to sell, mortgage, or lease property if the parties have lived on the property.
Interim Agreement	An offer to purchase, accepted, and signed by the vendor and purchaser.
Joint-Tenants	The joint and equal ownership of property by more than one individual on a single Title, by which, in the event of death of any one, that share automatically passes to those remaining.

Listing Agreement	A written agreement setting out the terms under which a person engages a real estate agent to seek a buyer for property he wishes to sell.
Listings	Property which is being offered for sale through real estate agent.
Mortgage	An agreement whereby a property owner conveys property to a lender as security on a debt, to be redeemed upon payment of the debt within the specified period of time and conditions. In practice the property is usually transferred to the creditor only in the case of default and foreclosure on the mortgage.
Mortgagee	The borrower, or debtor, who conveys his property via the mortgage.
Mortgagor	The lender, or creditor, who accepts and holds the mortgaged property.
Multiple Listing Service	A cooperative grouping of Real Estate firms through which they share property listings and the right to find a suitable buyer.
Offer to Purchase	A legally binding document setting out terms under which a potential purchaser is willing to purchase the listed property.
Parcel of Land	The land referred to in any one Certificate of Title. Every parcel has its own Certificate of Title.
Purchaser	A person who is buying property.
Realtor	Is a certification mark registered by the Canadian Real Estate Association denoting a standard of real estate service provided by its members. The term is often used incorrectly to denote any real estate agent or agency.
Registration of Title	The legal recording of ownership of, and preparing of a Certificate of Title for, a parcel of land by the Land Titles Office. The purchaser usually pays for this.
Restrictive Covenant	A specific restriction upon the usage of a property which may limit the ways in which any future purchaser is able to use the property, e.g. building restrictions.
Selling Price	The price for which a property actually sells. The agent's commission is calculated on and deducted from this price. The vendor receives the balance.
Sole Proprietorship	The ownership of property by a single individual.
Specific Performance	The performance of specific provisions of a contract under court order in the case where one of the parties to the agreement refuses to do so voluntarily.

Tenants-in-Common	The joint ownership of property by more than one individual, in which each owner's share may differ, each may be free to sell his own share, and each owner's share forms a portion of his estate in the event of death.
Title Search	For a nominal charge, the Land Titles Office will check the Certificate of Title and inform the individual making the request of any restrictions, claims, or obligations registered against the property in question.
Transfer	The process and documents by which ownership is formally shifted from the Vendor to the Purchaser.
Unregistered Mortgage	Normally mortgages are registered as such on the Certificate of Title to protect the mortgage holder, but this is not mandatory. If not so registered, they may be protected by caveat. The net effect is about the same.
Vendor	A person who is selling a parcel or item or property he owns.